

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code section 17A.4 and Iowa Code chapters 476 and 478, the Utilities Board (Board) gives notice that on December 2, 2013, the Board issued an order in Docket No. RMU-2012-0002, In re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 IAC 15.5(2), "Order Adopting Amendments to 199 IAC 25.4." In this Adopted and Filed, the Board is adopting amendments to 199 IAC 25.4 to establish requirements for pole attachments installed by electric utilities, telecommunications carriers, cable system providers, video service providers, data service providers, wireless service providers, and similar persons and entities to poles owned by electric and telecommunications companies. Notice of Intended Action for the proposed amendments was published in IAB Vol. XXXV, No. 25 (6/12/13), p. 1941, as **ARC 0784C**.

In an order issued May 20, 2013, the Board decided not to adopt a new Chapter 27 that would assert jurisdiction over the rates, terms, and conditions of pole attachment agreements and certify that jurisdiction to the Federal Communications Commission (FCC). Instead, the Board gave notice of the proposed amendments to 199 IAC 25.4 that are being adopted herein, with certain revisions, amending the Iowa Electrical Safety Code to address pole attachments. The adopted amendments establish time frames for notice of violations of the Iowa Electrical Safety Code; the time within which to correct violations; penalties; dispute resolution procedures; and possible penalties if violations are not corrected.

In the May 20, 2013, order, the Board determined that adopting amendments to the Iowa Electrical Safety Code should accomplish the Board's objective of ensuring the safety of pole attachments without adding unnecessary regulations. In this determination, the Board no longer proposed to assert jurisdiction over the rates, terms, and conditions for pole attachment agreements and certification to the FCC. The Board stated that the proposed amendments did not require pole attachment agreements to be in writing and did not make any reference to rates, terms, or conditions in a pole attachment agreement. The Board pointed out that pole attachment agreements in Iowa would remain subject to the jurisdiction of the FCC. The Board stated that there appeared to be general consensus that the Board has jurisdiction over the safety of pole attachments.

On July 2, 2013, comments regarding the proposed amendments to 199 IAC 25.4 were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate); Mediacom Communications Corporation (Mediacom); Cox Telcom, LLC (Cox); the Iowa Association of Electric Cooperatives (IAEC); AT&T Corp., Teleport Communications America, LLC, and New Cingular Wireless d/b/a AT&T Mobile (AT&T); and the Iowa Utilities Association (IUA).

On July 12, 2013, the Board conducted an oral presentation at which the Board asked several questions related to the written comments, and participants provided additional comments concerning the proposed amendments. One of the specific issues addressed at the oral presentation was whether there should be changes to the proposed amendments to address service drops and overloading.

After the oral presentation, the Board issued an order establishing a date for additional written comments. In the order, the Board requested that, in addition to any other issues a party wished to address, parties address (1) whether notice is required for service drops and overloading; (2) if notice is proposed, should the rules specify the type of notice; and (3) suggest language that will meet the requirements of the pole occupant for service drops and overloading and continue to ensure the safety of the service drop and overloading. Additional written comments were filed by Qwest Corporation d/b/a CenturyLink QC (CenturyLink), IUA, Mediacom, and AT&T.

A summary of the comments and the revisions to the proposed amendments can be found in the "Order Adopting Amendments to 199 IAC 25.4," which is accessible through the Board's electronic filing system (EFS) at the EFS Web site at <http://efs.iowa.gov>.

There were no comments, written or oral, concerning the proposed amendments in subrule 25.4(1) or in proposed paragraphs 25.4(2)"b," "d," "f," and "h." A nonsubstantive revision has been adopted in paragraph 25.4(2)"g."

A comment was made suggesting that the reference to “excess space” in subrule 25.4(2) be deleted, as it was confusing. The Board decided that the language should remain in the adopted amendment since the term “excess space” was added to clarify where pole attachments were to be installed.

Comments were made suggesting that the term “excess space” be added to the definition of “pole attachment” and that a definition of “service drop” be added. The Board decided not to adopt either suggestion. The Board did not consider the addition of the term “excess space” to be necessary, and the Board was concerned that any definition of “service drop” might limit the general industry understanding of the term.

Several comments with suggested changes were made regarding paragraph 25.4(2)“c.” Comments suggested that the requirement for written requests could conflict with federal law concerning overloading and service drops. Commenters also pointed out that federal law allowed a pole occupant to install a service drop and overloading without the consent or approval of the pole owner. Language was suggested to ensure there would be no conflict with any federal law or regulations in the adopted amendments. It was also suggested that the paragraph be deleted since it arguably addressed more than the safety of pole attachments.

The Board considered these comments and agreed that language should be adopted in paragraph 25.4(2)“c” to exempt service drops and overloading from the prior request requirement but require notice to the pole owner of the installation of service drops and overloading. The Board decided not to adopt the other suggested changes since the Board considered the adopted language to be consistent with federal law and regulations and, without the prior request requirements for pole attachments, there would not be an adequate way to ensure that new pole attachments were made in compliance with the Iowa Electrical Safety Code.

There were also comments from the Iowa Association of Electrical Cooperatives that the requirement for nondiscriminatory access to poles owned by electric cooperatives and municipal utilities created a legal obligation for these utilities that is not found in current Iowa law. To address this concern, the Board adopted a provision in paragraph 25.4(2)“c” that creates an exception from the nondiscriminatory access requirement if the pole owner is not required by federal or state law to provide nondiscriminatory access.

With regard to paragraph 25.4(2)“e,” comments suggested that more time be allowed incrementally for correcting violations based upon the number of pole violations that were received at one time by the pole occupant. Comments also suggested that the pole owner be required to give the pole occupant advance notice if 25 or more violations were to be sent at one time. The Board decided that no additional time needed to be provided and prior notice was not required. The amendment allows pole occupants and pole owners to agree to different notice and correction time periods which the Board considers a preferable way of addressing notices that include a listing of more than 25 violations. The requirements adopted provide a standard requirement where there is no agreement between the pole occupant and the pole owner.

The Board did adopt revisions to paragraph 25.4(2)“e” to simplify and clarify the time period to respond to violations and to correct violations. Where the proposed amendment established separate time periods for notice of fewer than 25 violations and notice of 25 or more violations, the adopted amendment extends the time period for responses to all violations to 60 days and for corrective action to 180 days. The Board decided that having one date for responses and one date to complete corrective action would reduce confusion about the time periods required by the amendment.

After analysis and review of the adopted amendments, the Board tentatively concludes that the amendments will have a beneficial effect on the safety and reliability of pole attachments to electric and telecommunications poles in Iowa. The safety and reliability of pole attachments that provide electric service and communications service to Iowa residents and businesses are necessities for economic development and the safety of the public and utility pole workers. Safe and reliable installation of pole attachments will have a beneficial effect on jobs in Iowa, although that effect cannot be quantified.

These amendments are intended to implement Iowa Code section 17A.4 and Iowa Code chapters 476 and 478.

These amendments will become effective February 12, 2014.

The following amendments are adopted.

Amend rule 199—25.4(476,478) as follows:

199—25.4(476,478) Correction of problems found during inspections and pole attachment procedures.

25.4(1) Corrective action shall be taken within a reasonable period of time on all potentially hazardous conditions, instances of safety code noncompliance, maintenance needs, potential threats to safety and reliability, or other concerns identified during inspections. Hazardous conditions shall be corrected promptly. In addition to the general requirements stated in this subrule, pole attachments shall comply with the specific requirements and procedures established in subrule 25.4(2).

25.4(2) To ensure the safety of pole attachments to poles owned by utilities in Iowa, this subrule establishes requirements for attaching electric lines, communications lines, cable systems, video service lines, data lines, wireless antennae and other wireless facilities, or similar lines and facilities that are attached to the excess space on poles owned by utilities.

a. Definitions. The following definitions shall apply to this rule.

“Pole” means any pole owned by a utility that carries electric lines, communications lines, cable systems, video service lines, data service lines, wireless antennae or other wireless facilities, or similar lines and facilities.

“Pole attachment” means any electric line, communication circuit, cable system, video service line, data service line, antenna and other associated wireless equipment, or similar lines and facilities attached to a pole or other supporting structure subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478).

“Pole occupant” means any electric utility, telecommunications carrier, cable system provider, video service provider, data service provider, wireless service provider, or similar person or entity that constructs, operates, or maintains pole attachments as defined in this chapter.

“Pole owner” means a utility that owns poles subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478).

b. Compliance with Iowa electrical safety code. Pole attachments to poles shall be constructed, installed, operated, and maintained in compliance with the Iowa electrical safety code, 199—25.2(476,476A,478), and the requirements and procedures established in this subrule.

c. Requests for access to poles; exceptions for service drops and overlashing.

(1) A pole owner shall provide nondiscriminatory access to poles it owns, to the extent required by federal or state law. Requests for access to poles by an electric utility, telecommunications carrier, cable system operator, video service provider, data service provider, wireless service provider, or similar person or entity shall be made in writing or by any method as may be agreed upon by the pole owner and the person or entity requesting access to the pole. If access is denied, the pole owner shall explain in detail the specific reason for denial and how the denial relates to reasons of lack of capacity, safety, reliability, or engineering standards.

(2) Service drops are not subject to the notice and approval requirements in subparagraph 25.4(2)“c”(1). Instead, pole occupants shall provide notice to pole owners within 30 days of the installation of a new service drop, unless the pole occupant and pole owner have negotiated a different notification requirement.

(3) Overlashing of existing lines is not subject to the notice and approval requirements in subparagraph 25.4(2)“c”(1). Pole occupants shall provide notice to pole owners of proposed overlashing at least 7 days prior to installation of the overlashing, unless the pole occupant and pole owner have negotiated a different notification requirement.

d. Notification of violation. A pole owner shall notify in writing a pole occupant of an alleged violation of the Iowa electrical safety code by a pole attachment owned by the pole occupant or may provide notice by another method as may be agreed upon by the parties to a pole attachment agreement. The notice shall include the address and pole location where the alleged violation occurred, a description of the alleged violation, and suggested corrective action.

e. Corrective action.

(1) Upon receipt of notification from a pole owner that the pole occupant has one or more pole attachments in violation of the Iowa electrical safety code, the pole occupant shall respond to the pole owner within 60 days in writing or by another method as may be agreed upon by the pole occupant and the pole owner. The response shall provide a plan for corrective action, state that the violation has been corrected, indicate that the pole attachment is owned by a different pole occupant, or indicate that the pole occupant disputes that a violation has occurred. The violation shall be corrected within 180 days of the date notification is received unless good cause is shown for any delay in taking corrective action. A disagreement that a violation has occurred, a claim that correction is not possible within the specific time frames due to events beyond the control of the pole occupant, or a claim that a different pole occupant is responsible for the alleged violation will be considered good cause to extend the time for taking corrective action. The pole occupant and pole owner may also agree to an extension of the time for taking corrective action. The pole owner and pole occupant shall cooperate in determining the cause of a violation and an efficient and cost-effective method of correcting a violation.

(2) If the violation could reasonably be expected to endanger life or property, the pole occupant shall take the necessary action to correct, disconnect, or isolate the problem immediately upon notification. If immediate corrective action is not taken by the pole occupant for a violation that could reasonably be expected to endanger life or property, the pole owner may take the necessary corrective action and the pole occupant shall reimburse the pole owner for the actual cost of any corrective measures. If the pole owner is later determined to have caused the violation and the pole occupant has taken corrective action, the pole owner shall reimburse the pole occupant for the actual cost of the corrective action. Disputes concerning the ownership of the pole attachment should be resolved as quickly as possible.

f. *Negotiated resolution of disputes.* Parties to disputes over alleged violations of the Iowa electrical safety code, the cause of a violation, the pole occupant responsible for the violation, the cost-effective corrective action, or any other dispute regarding the provisions of subrule 25.4(2) shall attempt to resolve disputes through good-faith negotiations. Parties may file an informal complaint with the board pursuant to 199—Chapter 6 as part of negotiations.

g. *Complaints.* Complaints concerning the requirements or procedures established in subrule 25.4(2), including alleged violations of the Iowa electrical safety code, may be filed with the board by pole owners or pole occupants pursuant to the complaint procedures in 199—Chapter 6.

h. *Civil penalties.* Persons found to have violated the provisions of subrule 25.4(2) may be subject to civil penalties pursuant to Iowa Code section 476.51 or to other action by the board.

[Filed 12/9/13, effective 2/12/14]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.